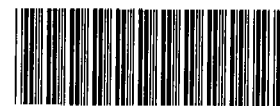


CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

DATE: November 2, 2000

DOCKET NO.: W-03880A-00-0376 and W-02373A-00-0376

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Alicia Grantham. The recommendation has been filed in the form of an Opinion and Order on:

GARDNER WATER COMPANY
(SALE OF ASSETS/TRANSFER CC&N)


Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

NOVEMBER 13, 2000

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 28, 2000 AND NOVEMBER 29, 2000

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 WILLIAM A. MUNDELL
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
GARDNER WATER COMPANY FOR
7 APPROVAL OF THE SALE OF ASSETS AND
TRANSFER OF CERTIFICATE OF
8 CONVENIENCE AND NECESSITY TO PROVIDE
WATER SERVICE.

DOCKET NOS. W-03880A-00-0376
W-02373A-00-0376

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: October 2, 2000

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Alicia Grantham

12 APPEARANCES: Ms. Letha Jean Gardner, Gardner Water Company;

13 Mr. Gerald Lendzion, JNJ Enterprises, LLC; and

14 Mr. Robert J. Metli, Staff Attorney, Legal Division, on
15 behalf of the Utilities Division of the Arizona
16 Corporation Commission.

17 **BY THE COMMISSION:**

18 On May 31, 2000, Gardner Water Company ("Gardner Water") filed an application with the
19 Arizona Corporation Commission ("Commission") for approval of the sale of assets and transfer of
20 Certificate of Convenience and Necessity ("Certificate") to JNJ Enterprises, LLC ("JNJ").

21 On August 29, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff Report
22 in this matter.

23 Pursuant to the Commission's July 11, 2000 Procedural Order, the matter was scheduled for
24 hearing on October 2, 2000.

25 Gardner Water provided notice of the hearing to its customers and property owners in its
26 Certificated area by first class U.S. Mail in July 2000 and filed a Certification of Notification with the
27 Commission on November 1, 2000.

1 On October 2, 2000, a full public hearing was held before a duly authorized Administrative
2 Law Judge of the Commission at its offices in Phoenix, Arizona. Gardner Water and JNJ appeared
3 through their owners, Letha Jean Gardner and Gerald Lenzion, respectively. Staff appeared with
4 counsel. At the conclusion of the hearing, the matter was taken under advisement pending
5 submission of a Recommended Opinion and Order to the Commission.

6 * * * * *

7 Having considered the entire record herein and being fully advised in the premises, the
8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 1. Pursuant to authority granted by the Commission, Gardner Water provides public
11 water utility services to approximately 165 customers in Gila County, Arizona.

12 2. On May 28, 2000, Gardner Water entered into a contract to sell its water utility assets
13 and transfer its Certificate to JNJ. According to the contract, JNJ shall pay a purchase price of
14 \$50,000 to Gardner Water for its assets.

15 3. On May 31, 2000, Gardner Water and JNJ filed an application requesting the
16 Commission's authorization for the sale of assets and transfer of Certificate from Gardner Water to
17 JNJ.

18 4. Staff's Report states that Gardner Water is not in compliance with Commission
19 Decision No. 60564 (December 18, 1997). In that Decision, the Commission ordered Gardner Water
20 to install meters on its wells, however, Staff's July 5, 2000 inspection of the water system found that
21 Gardner Water had not installed a well meter on Well No. 2. At the hearing, Gardner Water stated
22 that the well meter on Well No. 2 was installed on July 13, 2000.

23 5. The Commission also ordered, in Decision No. 60564, that Gardner Water install two
24 individual meters for two unmetered customers. During its inspection, Staff found that Gardner had
25 not installed the two meters. Staff recommended that Gardner Water be ordered to install the two
26 individual meters within 30 days from the effective date of the Commission's Decision in this matter.

27 6. The owner of JNJ has operated a water utility since July 2000. In addition, the owner
28 of JNJ is in the process of obtaining a degree in facilities maintenance, which includes working with

1 pumps, hydraulics and filters. JNJ will retain Gardner Water's certified water operator until such
2 time as JNJ's owner becomes a certified water operator.

3 7. Gardner Water provided notice of the proposed sale and transfer of Certificate to
4 customers and property owners located in Gardner Water's Certificated area by first class U.S. Mail
5 in July 2000 and filed a Certification of Notification, as a late filed exhibit, with the Commission on
6 November 1, 2000. No customer complaints regarding the proposed sale and transfer have been
7 received by the Commission.

8 8. Gardner Water has no obligations for refunds due on main extension agreements, and
9 no refunds are due on meter and service line installations. In addition, there are no security deposits
10 to be refunded.

11 9. Staff's Report stated that Gardner Water's system has adequate storage capacity to
12 serve the existing customers, although the system has experienced a 37% water loss in the past
13 thirteen months. Engineering Staff recommends that Gardner take steps to reduce its water loss to a
14 maximum of 10% and address any costs associated with its efforts to do so at its next rate case
15 application. Engineering Staff stated at the hearing that the installation of the well meters may
16 provide more accurate water loss data, which will be submitted when the next rate case application is
17 filed.¹

18 10. The Arizona Department of Environmental Quality ("ADEQ") states that Gardner is
19 delivering water that does not exceed any maximum contaminant levels and is in compliance with the
20 Safe Drinking Water Rules. In addition, Gardner Water stated at the hearing that it is current on its
21 property and sales taxes.

22 11. Staff's Report also stated that Gardner Water's Well No. 2 dried out in June of 2000,
23 and Gardner Water hired a well driller to deepen the well. The well was back in service before July
24 4, 2000, and according to Gardner Water, the cost of this work was less than \$12,500. Therefore,
25 Gardner is exempt from ADEQ's Certificate of Approval to Construct requirements. Staff
26 recommended that Gardner Water forward copies of all invoices for the well drilling to JNJ after the
27

28 ¹ Well meters were installed subsequent to Staff's July 5, 2000 inspection. Staff believes that the installation of these well
meters may reduce the reported water loss to 10% or less.

1 purchase of the assets is completed.

2 12. Staff has recommended approval of Gardner Water's application for the sale of the
3 assets and transfer of its Certificate to JNJ.

4 13. Staff further recommended that Gardner Water install the two individual meters within
5 30 days from the effective date of the Commission Order, in compliance with Decision No. 60564.

6 14. Staff further recommended that JNJ comply with Decision No. 60564 and submit a
7 rate application to the Commission within 90 days from the effective date of this Decision.

8 15. Staff further recommended that JNJ submit a copy of its operator certification to the
9 Commission prior to becoming JNJ's certified operator.

10 16. Staff also recommended that the Commission's Decision covering the sale of assets
11 and transfer of the Certificate to JNJ be considered null and void without further order from the
12 Commission should Gardner Water fail to meet the above conditions within the time specified.

13 17. Staff further recommended that JNJ be ordered to charge Gardner Water's existing
14 rates and charges until further order of the Commission.

15 18. JNJ stated at the hearing that the company would comply with Staff's
16 recommendations.

17 **CONCLUSIONS OF LAW**

18 1. Gardner Water and JNJ are public service corporations within the meaning of Article
19 XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

20 2. The Commission has jurisdiction over Gardner Water and JNJ and of the subject
21 matter of this application.

22 3. There is a continuing need for the provision of water utility service to the public in
23 Gardner Water's certificated service area.

24 4. JNJ is a fit and proper entity to receive the assets and Certificate of Gardner Water.

25 5. Notice of the application was given in accordance with the law.

26 6. Staff's recommendations set forth in Findings of Fact Nos. 9, 11, 12, 13, 14, 15, 16
27 and 17 are reasonable as modified herein and should be adopted.

28

ORDER

IT IS THEREFORE ORDERED that the application of Gardner Water Company for approval of the sale of water utility assets and transfer of its Certificate of Convenience and Necessity to JNJ Enterprises, LLC be, and is hereby, approved as conditioned below.

IT IS FURTHER ORDERED that this Decision shall be considered null and void without further order from the Commission, should Gardner Water Company and JNJ Enterprises, LLC fail to meet the below conditions within the time specified.

IT IS FURTHER ORDERED that Gardner Water Company and/or JNJ Enterprises, LLC shall install two individual meters for its two unmetered customers within 30 days from the effective date of this Decision.

IT IS FURTHER ORDERED that JNJ Enterprises, LLC shall comply with Commission Decision No. 60564 and submit a rate application to the Commission within 90 days from the effective date of this Decision.

IT IS FURTHER ORDERED that JNJ Enterprises, LLC shall file a plan to reduce the company's water loss to a maximum of 10 percent within 30 days from the effective date of this Decision, and JNJ Enterprises, LLC shall address any costs associated with its efforts to do so at its next rate application.

IT IS FURTHER ORDERED that Gardner Water Company shall forward all copies of any invoices for well drilling work to JNJ Enterprises, LLC within 30 days from the effective date of this Decision.

IT IS FURTHER ORDERED that JNJ Enterprises, LLC shall submit a copy of its operator certification to the Commission prior to becoming the certified operator for JNJ Enterprises, LLC.

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1 IT IS FURTHER ORDERED that JNJ Enterprises, LLC shall charge Gardner Water
2 Company's existing rates and charges until further order of the Commission.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN

COMMISSIONER

COMMISSIONER

8
9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this ____ day of _____, 2000.

14 BRIAN C. McNEIL
EXECUTIVE SECRETARY

15 DISSENT _____
16 AG:bbs
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1 SERVICE LIST FOR: GARDNER WATER COMPANY and
2 JNJ ENTERPRISES, LLC
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